

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 16714 of 2003

For Approval and Signature:

HON'BLE MR.JUSTICE D.P.BUCH

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the concerned : NO
Magistrate/Magistrates, Judge/Judges, Tribunal/Tribunals?

SIVAJI MOHANJI THAKOR

Versus

DISTRICT MAGISTRATE

Appearance:

1. Special Civil Application No. 16714 of 2003
MR ANIL S DAVE for Petitioner No. 1
MR KAMEN N SHUKLA for Petitioner No. 1
Ms P B Sheth, AGP for Respondent No. 1-3
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CORAM : HON'BLE MR.JUSTICE D.P.BUCH

Date of decision: 21/04/2004

ORAL JUDGEMENT

The petitioner has filed this petition under

under Article 226 of the Constitution of India for appropriate writ, order or direction for quashing and setting aside an order dated 15.11.2003 passed by respondent No.1 under section 3(2) of the Gujarat Prevention of Anti-social Activities Act, 1985 (for short, 'the PASA Act') directing detention of the present detenu on the grounds stated in the detention order.

2. It may be noted that the petitioner has filed the petition as son of the detenu.

It was alleged against the detenu that nine cases under the Bombay Prohibition Act, 1949 were registered against the detenu before Adalaj police station during the period between 28.10.2002 and 20.8.2003.

3. It was also alleged against the detenu that four witnesses have rendered statements against the detenu. That on the strength of the said registered offences and unregistered cases, the detenu was found to be a bootlegger and with a view to prevent the detenu from carrying on his illegal activities, he was ordered to be detained by order of detention which has been impugned in this petition. The petitioner has challenged the order of detention passed against his father on various considerations. It has been contended that there was a delay in passing the order of detention and the names of the witnesses whose statements were considered by the detaining authority were not disclosed by the detaining authority. Therefore, the detenu could not make effective representation against the detention. Therefore, the order of detention is illegal and deserves to be set aside.

4. On receiving the petition, rule was issued and in response to the notice of rule, Ms. P B Sheth, learned AGP appears on behalf of the respondents.

At the final hearing, learned Advocate for the petitioner has contended that the order of detention has been passed on 15.11.2003 against the detenu. That the detaining authority has considered statements of four witnesses recorded by the concerned police officers but those statements have not been verified by the detaining authority. It can be gathered from those statements at page 149 onwards that the statements of four witnesses were recorded on 21.10.2003. It also appears from those statements that at the bottom of the said statements, the detaining authority has simply signed. There is no mention that the witnesses were called by the detaining authority and they were again examined by the detaining

authority and further statements of the said witnesses were recorded by him. This shows that the statements of the said witnesses were not personally verified by the detaining authority. It is well settled that it would not be proper on the part of the detaining authority to consider the statements recorded by a subordinate police officer. It would be necessary on his part to verify the statements by calling the witnesses before him. This procedure has not been followed. Therefore, the order of detention cannot be sustained in the eye of law.

5. Moreover, the detaining authority has not filed any affidavit showing that the said statements were verified by the detaining authority before passing the order of detention. Therefore also the order of detention cannot be sustained in absence of verification of the statements made by the witnesses.

6. So far as the order of detention is concerned, learned Advocate for the petitioner has contended that the detenu was allegedly involved in 9 prohibition offences during the period between October, 2002 and August, 2003. That thereafter the order of detention has been passed on 15.11.2004. This shows that there was long lapse of time between the last registered offence and the date of order of detention. It can be gathered that the statements of witnesses were considered by the detaining authority but those statements were also recorded in October, 2003 which was two months after registration of last offence against the detenu. Therefore, even the statements of the witnesses were recorded much after the last registered offence against the detenu.

7. This fact goes to show that there was no immediate need on the part of the detaining authority to pass the order of detention against the detenu. Therefore, the delay which has not been explained to any extent by filing affidavit, is vital to the order of detention against the detenu. Therefore, on this consideration also, the order of detention cannot be sustained in the eye of law.

8. For the foregoing reasons this petition is allowed. The impugned order dated 15.11.2003 passed by respondent No.1 is ordered to be quashed and set aside. The detenu is ordered to be set at liberty forthwith, if no longer required in any other case. Rule is made absolute to the aforesaid extent. No order as to costs. D.S. permitted.

[D P Buch, J.]

msp